

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
GLENN R. AND JULIA A. STEWART)

For Appellants: Alan D. Pauw
 Certified Public Accountant

For Respondent: Bruce W. Walker
 Chief Counsel

Paul J. Petrozzi
Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Glenn R. and Julia A. Stewart for refund of personal income tax in the amount of \$1,589 for the year 1974.

Appeal of Glenn R. and Julia A. Stewart

The issue presented is whether a taxpayer who reports the entire gain from the sale of property **in** 1974 can retroactively elect to treat the sale on the installment basis.

In September 1974, appellants sold two parcels of land located in California. The total selling price was \$62,000. Appellants received approximately \$9,600 in 1974. In filing their 1974 personal income tax return, appellants reported the entire gain from the sale in that year. Thereafter, on April 15, 1976, appellants filed an amended return for 1974 reporting the sale on the installment basis pursuant to sections 17577-17580.5 of the Revenue and Taxation Code, and claimed a refund. Respondent denied the refund and this appeal followed.

In Appeal of Carl H. and Ellen G. Bergman, decided by this board February 19, 1974, we held that where a taxpayer elects to report the entire gain on the sale of real property in the year of sale, he cannot, thereafter, change his election to the installment method of reporting the gain. In Bergman we relied on the decision of the United States Supreme Court in Pacific National Co. v. Welch, 304 U.S. 191 [82 L. Ed. 1282] (1938) which **held that** where a taxpayer makes an election not to use the installment reporting method, that election is binding and may not be changed after expiration of the time allowed for filing the return. In so holding, **the Court** stated:

Change from one -method [of reporting income] to [another], as petitioner seeks, would require recomputation and readjustment of tax liability for subsequent years and impose burdensome uncertainties upon the administration of the revenue laws. It would operate to enlarge the statutory period for filing returns ... to include the period allowed for recovering overpayments. ... There is nothing to suggest that Congress intended to permit a taxpayer, after expiration of the time within which return is to be made, to have his tax liability computed and settled according to [another] method. By reporting income from the sales in question according to [one] method, petitioner made an election that is binding upon it and the commissioner. (304 U.S. at 194-195.) (Footnote omitted.)

Appeal of Glenn R. and Julia A. Stewart

In support of their position, appellants cite four decisions of this board (Appeal of Robert M. Catlin, Jr. and Esther H. Catlin, Cal. St. Bd. of Equal., Nov. 17, 1964; Appeal of Estate of Anna Armstrong, Deceased, Cal. St. Bd. of Equal., Oct. 27 1964; Appeal of Alfred and Louise Wessel, Cal. St. Bd. of Equal., Oct. 27, 1964; Appeal of Robert M. and Jean W. Brown, Cal. St. Bd. Of Equal., Dec. 10 1963). These decisions, however, are distinguishable:

In Catlin, Armstrong and Wessel the taxpayers failed to file a return. Since there was no prior election to use **an** inconsistent method of reporting the gain from the sales, we held that the failure to file a timely return did not prohibit the taxpayers from utilizing the installment method.

In Brown, although a timely return was filed, the taxpayer **failed** to report the sale of a partnership interest. Thereafter, the taxpayers filed an amended return reporting the sale on the installment method. We held that the taxpayers were authorized to use the installment method since the year was still open and the sale had not been treated in an inconsistent manner.

In the instant appeal, appellants reported the entire gain from the property sale on their 1974 tax return, thereby electing not to use the installment method. In line with Pacific National Co. v. Welch, *supra*, and Appeal of Carl H. and Ellen G. Bergman, supra, we conclude that, once the sale was treated **in** an inconsistent manner by reporting the entire amount of the gain on their 1974 return, appellants cannot, thereafter, change that election and report the gain on the installment basis. Accordingly, respondent's action must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

